CP 1007 (4)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

Writ Petition No. 3794 /2004 Single Bench

Writ petition Under Article 226(2) of the Constitution of India.

***

PETITIONER :: M/s Kanker Roadways, a partnership firm, through the Partner Shri Preetam Singh Garcha, near Gandhi Udyan, Civil Lines, Raipur (CG).

P.R. No. 8792/04
Presented by Shri Sanjay Gupta Advocate
dated 8.10.04

Versus

RESPONDENTS:: 1. The State of Chhattisgarh, through the Secretary, Department of Transport, D.K. Bhawan, Raipur (CG).
2. The State Transport Authority Raipur (CG).
3. The State of Madhya Pradesh, through the Secretary, Transport Department, Vallabh Bhawan, Bhopal (M.P.).
4. The State Trasport Authority, Moti Mahal, Gwalior (CG).
5. The State of Uttar Pradesh, through the Transport Secretary, Lucknow (U.P.).
6. The State Transport Authority, Lucknow (U.P.).

RECEIVED Copy 8.10.04 Clerk to A.G. Bilaspur

***

1 : Particulars of the petitioner:

As given in the cause title.

A.F.R.

(140)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2761 of 2004

Mohd. Hasan Khan

- Versus -

State of Chhattisgarh and five others

Writ Petition No.4858 of 2004

Mohd. Hasan Khan

- Versus -

State of Chhattisgarh and five others

AND

Writ Petition No.3794 of 2004

M/s. Kanker Roadways

- Versus -

State of Chhattisgarh and five others

POST FOR ORDER ON 4th ~~JANUARY~~ Feb., 2005

Sd/-
L.C.BHADOO
Judge

146

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2761 of 2004

Mohd. Hasan Khan

- Versus -

State of Chhattisgarh and five others

Writ Petition No.4858 of 2004

Mohd. Hasan Khan

- Versus -

State of Chhattisgarh and five others

AND

Writ Petition No.3794 of 2004

M/s. Kanker Roadways

- Versus -

State of Chhattisgarh and five others

Present: -

Mr. B.K. Rawat, Advocate:	For the petitioners.
Mr. Pramod Kumar Verma, Addl. Advocate General:	For the State/respondents No.1 and 2.
Mr. Rajeev Shrivastava, Standing Counsel:	For respondents No.4 & 5 and also for Intervener - M.P. State Road Transport Corporation.
Mr. Pankaj Shrivastava, Standing Counsel:	For respondents No.3 & 6.
Mr. B.P. Gupta, Advocate:	For the intervener.

O R D E R

(Passed on 17th February, 2005)

L.C. BHADOO, J.

1. Writ Petition No.2761/2004 (Mohd. Hasan Khan vs. State of Chhattisgarh and five others); Writ Petition No.4858/2004 (Mohd. Hasan Khan vs. State of Chhattisgarh and five others); and Writ Petition No.3794/2004 (M/s. Kanker Roadways vs. State of Chhattisgarh and five others) are

142

being disposed of by this common order, as all these petitions involve similar questions of fact and law.

2. By Writ Petition No.2761/2004 Mohd. Hasan Khan, the petitioner, has prayed for direction to the States of Chhattisgarh, Madhya Pradesh & Uttar Pradesh to finalize the reciprocal agreement for plying the stage carriages between the three States after creation of the State of Chhattisgarh and for grant of regular inter-State stage carriages permit after due modification of the nationalization scheme under the provisions of Section 102 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act'), and also to direct State Transport Authority, Lucknow (U.P.) and State Transport Authority, Gwalior (M.P.) to countersign the temporary permits granted in favour of the petitioner in respect of route from Bilaspur to Allahabad. The petitioner was granted temporary permits for stage carriages No.CG-04/E-0273 and CG-04/E-0274 for the period 1.9.2004 to 28.12.2004. He has also filed W.P.No.4858/2004 with same relief as on expiry of earlier permits on 28.12.2004 he has been granted another temporary permits for the period commencing from 29.12.2004 to 26.4.2005. In Writ Petition No.3794/2004 filed by M/s. Kanker Roadways, a prayer has been made to direct the States of Chhattisgarh, Madhya Pradesh & Uttar Pradesh to finalize the reciprocal agreement in respect of inter-State route from Raipur to Allahabad, and direct the State Transport Authority, Lucknow & State Transport Authority, Gwalior, to countersign the temporary permits granted to the petitioner.

3. Brief facts necessary for the disposal of these writ petitions, as narrated in the petitions, are that the erstwhile State of Madhya Pradesh and the State of Uttar Pradesh entered into a reciprocal agreement as envisaged under Section 88 (5) of the Act, for creation of inter-State route between Bilaspur and Allahabad, and the same was published on 31st May, 1994. However, this route was already operating as per the earlier reciprocal agreement. As per item No.186 of the said notification, a provision was made for plying two trips on the route from Bilaspur to Allahabad via Shahdol and Rewa. After re-organization of the State of

148

Madhya Pradesh under the M.P. Re-organization Act, 2000, the new State of Chhattisgarh was carved out from the State of Madhya Pradesh with effect from 1.11.2000, and on creation of the new State, the State of Chhattisgarh decided to cancel the scheme of State Transport Undertaking in the State of Chhattisgarh under Section 102 of the Act. As per the reciprocal agreement entered into between the States of Madhya Pradesh & Uttar Pradesh, the buses of Madhya Pradesh State Road Transport Corporation (M.P.S.R.T.C.) and Uttar Pradesh State Road Transport Corporation (U.P.S.R.T.C.) were operating on the strength of permits granted under the scheme on Bilaspur to Allahabad route as the area falling under the route was nationalized. After creation of the State of Chhattisgarh, the area of the above route falling under the jurisdiction of the States of Madhya Pradesh & Uttar Pradesh is still under nationalized scheme and the buses of M.P.S.R.T.C. & U.P.S.R.T.C. are plying. However, on account of cancellation of the scheme under Section 102 of the Act by the State of Chhattisgarh, no State Transport Corporation is in existence in the State of Chhattisgarh, and only private operators are operating their buses under the permits granted to them by the State Transport Authority, Raipur. Even the State of Chhattisgarh stopped the buses of M.P.S.R.T.C. and U.P.S.R.T.C. to enter into the territory of the State of Chhattisgarh. The petitioner herein (Mohd. Hasan Khan) applied for temporary permit on the said route and the STA, Raipur, granted two temporary permits to the petitioner, in the first instance for the period from 1.9.2004 to 28.12.2004, thereafter, from 29.12.2004 to 26.4.2005, and the respondents i.e. STA, Gwalior & STA, Lucknow, are not countersigning those temporary permits which forced the petitioner to file the instant writ petitions.

4. Reply has been filed on behalf of the State of Madhya Pradesh and also the State of Uttar Pradesh, and their reply is similar to the effect that since the route falling under the States of Madhya Pradesh & Uttar Pradesh is nationalized route and the buses of M.P.S.R.T.C. & U.P.S.R.T.C. are plying, therefore, on nationalized route the private operators cannot

149

be granted permits. Moreover, on these routes even the private operators of their own States are not being granted any permit.

5. I have heard learned counsel for the parties.

6. The main argument of learned counsel for the petitioners was that under the provisions of Sections 87 & 88 (7) as also proviso to Section 104 of the Act, the STA, Raipur, can grant temporary permits. His further argument was that on account of the cancellation of nationalized scheme by the State of Chhattisgarh under Section 102 of the Act, the route from Bilaspur to Allahabad, as per the reciprocal agreement entered into between the erstwhile State of Madhya Pradesh and the State of Uttar Pradesh, is still existing, therefore, the STA, Raipur can grant temporary permits under proviso to Section 104 of the Act.

7. On the other hand, learned counsel for the States of Madhya Pradesh & Uttar Pradesh argued that since the area of the route falling under the jurisdiction of the States of Madhya Pradesh & Uttar Pradesh is under nationalized scheme and buses of respective Corporations of those States are operating, on the nationalized routes the STA, Raipur is not entitled to issue any kind of permit. Similarly, same is the situation of the route from Raipur to Allahabad; as the route is from Raipur to Bilaspur, thereafter, the same Bilaspur-Allahabad route, which is the subject matter of W.P. Nos.2761/2004 & 4858/2004, and on nationalized route private operators cannot be granted permit, that too unless and until any reciprocal agreement is entered into between the three States.

8. Having heard learned counsel for the parties, I have perused the record of the three writ petitions. As far as the factual position is concerned, there is no dispute, and it is admitted that prior to re-organization of the State of Madhya Pradesh as per the reciprocal agreement entered into between the erstwhile States of Madhya Pradesh & Uttar Pradesh, the buses of M.P.S.R.T.C. & U.P.S.R.T.C. were plying on the routes from Bilaspur to Allahabad and Raipur to Allahabad. However, the problem started from 1.11.2000 i.e. after creation of the State of Chhattisgarh

bifurcating the State of Madhya Pradesh, and the newly created State of Chhattisgarh took a decision to abolish the State Road Transport Corporation under Section 102 of the Act. Thereafter, the State of Chhattisgarh stopped the buses of U.P.S.R.T.C. & M.P.S.R.T.C. from entering into the territory of Chhattisgarh to reach Bilaspur or Raipur. Therefore, the question for determination before this Court is whether the STA, Raipur, is entitled to issue permits in the guise of temporary inter-State permits on the routes extending up to Allahabad via Madhya Pradesh, whereas, the route falling in the area of States of Madhya Pradesh & Uttar Pradesh, is nationalized and the buses of respective Corporations are plying, that too without any reciprocal agreement between those two States with State of Chhattisgarh.

9. Section 87 of the Act deals with issuance of temporary permits by the STA in the four contingencies mentioned in clauses (a), (b), (c) & (d) of sub-section (1). It seems that the permits in question were issued by the STA, Raipur, under clause (c) of sub-section (1) of Section 87 of the Act, which envisages that temporary permits can be issued *to meet a particular temporary need*. The provisions of sub-section (7) of Section 88 of the Act envisages that

> "Notwithstanding anything contained in sub-section (1), a Regional Transport Authority of one region may issue a temporary permit under section 87 to be valid in another region or State with the concurrence, given generally or for the particular occasion, of the Regional Transport Authority of that other region or of the State Transport Authority of that other State, as the case may be."

Therefore, temporary permit can also be granted by the STA on a route where regular permits are granted considering the provisions of Section 87 of the Act, of course, subject to the concurrence given generally or for the particular occasion by the STA of that other State for which the temporary permit is being granted. Sub-sections (5) & (6) of Section 88 of the Act deal with the agreement by the two or more States for entering into the reciprocal agreement for plying the buses by those States and publication of the same scheme in the Official Gazette. These

151

Sections fall under Chapter-V. Further, Chapter-VI deals with 'Special provisions relating to State Transport Undertakings'. Section 99 of the Act deals with 'Preparation and publication of proposal regarding road transport service of a State transport undertaking'. Section 100 of the Act deals with 'Objection to the proposal' and publication of the scheme. Section 101 of the Act deals with 'Operation of additional services by a State transport undertaking in certain circumstances'. Section 102 of the Act deals with 'Cancellation or modification of scheme'. Section 103 of the Act deals with 'Issue of permits to State transport undertakings'. Section 104 of the Act deals with 'Restriction on grant of permits in respect of a notified area or notified route' which envisages that

> "Where a scheme has been published under sub-section (3) of section 100 in respect of any notified area or notified route, the State Transport Authority or the Regional Transport Authority, as the case may be, shall not grant any permit except in accordance with the provisions of the scheme".

However, proviso to Section 104 of the Act envisages that

> "where no application for a permit has been made by the State transport undertaking in respect of any notified area or notified route in pursuance of an approved scheme, the State Transport Authority or the Regional Transport Authority, as the case may be, may grant temporary permits to any person in respect of such notified area or notified route subject to the condition that such permit shall cease to be effective on the issue of a permit to the State transport undertaking in respect of that area or route".

10. In this connection, the Hon'ble Apex Court in the matter of **M/s. Adarsh Travels Bus Service and another v. State of U.P. and others** reported in **AIR 1986 Supreme Court 319** held that where the route is nationalized and scheme totally prohibits private operators from plying stage carriages on the route, the private operators are not entitled to operate their buses and no permits can be granted. Even the permit cannot be granted to a private operator on a route overlapping the nationalized route. Similar view has been taken by the Apex Court in the matter of **Karnataka State Road Transport Corporation v. Ashrafulla**

152

Khan and others reported in **(2002) 2 Supreme Court Cases 560** in which it has been held that the Scheme published nationalizing the route is a law, which has to be protected and preserved in public interest. Permit cannot be granted for a non-notified route, which overlaps the notified route or a portion of a notified route.

11. It is admitted position that the part of route from Bilaspur to Allahabad and Raipur to Allahabad, which falls under the jurisdiction of the States of Madhya Pradesh and Uttar Pradesh, is nationalized. Section 98 of the Act envisages that "The provisions of this Chapter and the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in Chapter V or in any other law for the time being in force or in any instrument having effect by virtue of any such law." Therefore, as per the provisions of Section 98 of the Act, which falls under Chapter-VI (Special Provisions Relating to State Transport Undertakings), it has the overriding effect over Sections 87 & 88 of Chapter V of the Act. In the circumstances, on the nationalized route/ notified route the STA, Raipur, was not authorized to grant temporary permit to private operators under Section 87 or Section 88 (7) of the Act for the area of nationalized route, which falls under the jurisdictions of the States of Madhya Pradesh & Uttar Pradesh.

12. Now, coming to the argument advanced by learned counsel for the petitioners that as per proviso to Section 104 of the Act, till the vacancy on the route from Bilaspur to Allahabad and Raipur to Allahabad, the STA, Raipur, was authorized to issue temporary permits to the petitioners, looking to proviso to Section 104 of the Act, the argument prima facie appears to be convincing. But, if it is examined on merits in accordance with the provisions of the Motor Vehicles Act, 1988, referred in the earlier part of this order, then the same is devoid of merit for the reason that as per proviso to Section 104 of the Act, temporary permits can be granted only in the circumstances where the State transport undertaking had not moved any application for grant of permit on that route. Here the circumstances are entirely different. As has been mentioned in the

earlier part of this order, earlier to reorganization of the State of Madhya Pradesh and coming into existence of the State of Chhattisgarh, the buses of M.P.S.R.T.C. and U.P.S.R.T.C. were operating, and after coming into operation of the M.P. Re-organization Act, and coming into existence of the State of Chhattisgarh, the State of Chhattisgarh has abolished the Scheme under Section 102 of the Act i.e. the notified route is not there that is the route starting from Raipur up to entry into the State of Madhya Pradesh and route starting from Bilaspur up to entry into the State of Madhya Pradesh, are de-notified. Therefore, by necessary implication, the State of Chhattisgarh by de-notifying the route has similarly cancelled the reciprocal agreement as far as the same relates to the territory of the State of Chhattisgarh. In the circumstances, unless and until, in the first instance all the three States enter into reciprocal agreement, the STA, Raipur, is not entitled to grant permits unilaterally for the territories of Madhya Pradesh and Uttar Pradesh.

13. Even during the course of the arguments, learned counsel for the respondents i.e. States of Madhya Pradesh & Uttar Pradesh, submitted that their Undertakings are ready to ply their buses on the same route subject to permission by the State of Chhattisgarh, which they are not granting. Therefore, this situation has been created by the State of Chhattisgarh itself and looking to the above facts and circumstances of the case, proviso to Section 104 of the Act is not applicable in the case. It is not the case where the State Road Transport Corporation/ Undertaking is not making any application for the permit. The permit was already with the M.P.S.R.T.C. and U.P.S.R.T.C., but on account of de-notifying the route in respect of the territory of the State of Chhattisgarh, the State of Chhattisgarh is not allowing the M.P.S.R.T.C. and U.P.S.R.T.C. to operate their buses.

14. In the given situation, as the area of the route falling in the territories of Madhya Pradesh and Uttar Pradesh is notified route/nationalized route, therefore, as per the provisions contained in Section 104 of the Act, the STA, Raipur, is not authorized to issue even temporary permits on the

154

route, and looking to the notified route, the STA, Lucknow & STA, Gwalior, cannot be directed to countersign the temporary permits issued in favour of the petitioners. Moreover, the temporary permits issued in favour of the petitioners are in fact regular permits in the guise of temporary permits, without commenting upon them I am leaving the same open for future adjudication in appropriate case.

15. Now, coming to the question of issuance of directions to the States of Chhattisgarh, Madhya Pradesh & Uttar Pradesh, for entering into reciprocal agreements for creation of route from Bilaspur to Allahabad and Raipur to Allahabad, no such writ of mandamus can be issued to the respondents/States for the reason that the policy decision has already been taken by the State of Chhattisgarh not to operate the State Undertaking buses. Under the public scheme the area falling under the States of Madhya Pradesh & Uttar Pradesh is notified route and it is for the concerned States to consider the need and convenience of the general public and commuters to take appropriate decision looking to the grounds, situation and demand of public. Particularly, such direction cannot be issued on the request of a transporter who himself is asking for the permit as he himself is the interested person in permits.

16. Therefore, in the result, the writ petitions are devoid of merit, and the same are liable to be dismissed. Accordingly, the writ petitions are dismissed. No costs.

Sd/-
L.C.BHADOO
Judge

Soma